

REMARKS

Claims 23-34 are pending in the present application. New Claims 35-44 have been added by this amendment.

A. Interview Summary

Applicant notes with appreciation the in-person interview between Examiner Daniel Hess and the undersigned attorney on December 8, 2004. In the interview, Claims 23 and 31 were discussed in view of the cited Watanabe '286 patent. The Examiner also presented Itoh (US 6,527,179) and Keys (US 6,394,351) not previously of record. It was agreed that the Applicant would file a response amending claims 23 and 31 to capture the distinction of the data reader performing the desired action as opposed to user input.

B. Amendments to the Title, Specification and Claims

It is submitted that the above amendments to the title, specification and claims are supported by the application as originally filed and add no new matter

C. Double Patenting

Claims 23-34 have been rejected under obviousness-type double patenting over specific claims of U.S. Patent No.

6,698,658. It is submitted that as to certain of the claims, the rejection is not warranted. However, a terminal disclaimer is filed herewith which obviates the rejection.

Claims 27-30 and 32-33 have been written in independent form. Since Claims 27-30 and 32-34 have been rejected only under obviousness-type double patenting, and that rejection has been obviated by the filing of the terminal disclaimer, it is submitted that Claims 27-30 and 32-34 should be allowable.

D. Claims 23-26 and 31

Claim 23 has been rejected under 35 U.S.C. 103 over Watanabe '286. This rejection is respectfully traversed. It is noted that Watanabe '286 does not disclose "the data reader selecting a delay time, out of the plurality of delay times, based upon a given criteria" as in Claim 23. The Office Action suggests that the delay time in Watanabe '286 is a "software variable" and this is "changeable". During the 12/8/2004 interview with the Examiner, it was discussed that though Watanabe '286 truly does not suggest this variable as being changeable, it was noted that some bar code scanners are user programmable, such as by bar code label programming, to change various scanner features such as "beep volume", "beep tone" and "double read timeout".

To clarify this distinction, Claim 23 has been amended to read:

the data reader actively selecting a delay time, out of the plurality of delay times, based upon a given criteria acquired during operation while gathering identification data.

In contrast, in the items of record it is the user that may select a specific delay time, and once selected, this delay time is fixed and is not selected by the data reader as in Claim 23.<sup>1</sup>

Similarly, Claim 31 has been amended and includes the step:

the data reader switching between first and second operating modes based upon a given criteria acquired while gathering identification data wherein the delay time in the first operating mode is longer than the delay time in the second operating mode.

In contrast, in the items of record it is the user that may select a specific delay time, and once selected, this delay time is fixed and is not switched by the data reader as in Claim 31.

Therefore it is submitted that a *prima facie* case of obviousness cannot be made as to Claims 23 and 31, and these claims are non-obvious and allowable over the items of record.

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<sup>1</sup>An example of a user programmable scanner is disclosed in the PSC Inc. VS1000 & SP\*ACE Programming Kit manual (Item CA in the concurrently filed IDS).

It is also submitted that Claims 24-26 should also be allowable in part as depending upon an allowable base claims.

E. New Claims 35-44

New Claims 35-39 depending on Claim 23 and new Claims 40-44 depending on Claim 31 should be allowable in part as depending upon an allowable base claim. These claims provide further distinguishing features not disclosed in the items of record. In Claims 35 and 40, the given criteria comprises determining whether the item is weighable or non-weighable. In Claims 36 and 41, the given criteria comprises determining a type of tag or label being read. In Claims 37 and 42, the given criteria comprises determining a class or type of item being read. In Claims 38 and 43, the given criteria comprises determining if the item being read is a produce item. In Claim 39, the given criteria comprises relative frequency of pieces of complete code data received by the data reader. None of these limitations is disclosed in the items of record to be done by the data reader as claimed.

F. Conclusion

Therefore it is submitted that Claims 23-44 are allowable  
and an Notice of Allowance is earnestly solicited.

Respectfully submitted,

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Attached: Terminal Disclaimer